IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6104 of 1990

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PANCHMAHAL DIST. PANCHAYAT EMPLOYEES UNION

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6104 of 1990

NOTICE SERVED for Petitioner No. 1

Mrs. Manisha L Shah AGP for Respondent No. 1-1/3

MR HS MUNSHAW for Respondent No. 2

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 02/11/2004

ORAL JUDGEMENT

1. This petition under Article 226 of the Constitution of India, filed by Panchmahals District

Panchayat Employees Union, Class-III, through its President M.F. Kazi, raises a question with regard to power of the State Government to issue notifications for making reservation in the matter of promotion of Class III employees of the Panchayat Department.

2. The substance of challenge in this petition is that notifications challenged in this petition are contrary to the requirements of the Constitution of India, and, before issuance of the notifications, proper procedure is not followed, meaning thereby, the matter was not debated in the House, no statutory requirements were fulfilled, and the same are contrary to Article 16(4), and violative of Article 14, of the Constitution of India.

3. The petitioner has contended that the provisions of Section 203 of the Gujarat Panchayats Act, which permit a percentage of vacancies to be reserved for the members of the Scheduled Caste, the Scheduled Tribe and other backward classes in the panchayat service straightaway, cannot be made applicable, in the absence of an amendment under the Act.

4. In short, the contention of the petitioner is that the impugned notification has no constitutional mandate and the same cannot be implemented and, therefore, they have sought intervention of this Court under Article 226 of the Constitution of India.

5. The Registry has already issued notice to the petitioner to appear and represent its case before the Court, and the said notice was also served upon the petitioner, but, till date, no representation is made on behalf of the petitioner.

6. Today, when the matter is called out for final hearing, learned AGP, Mrs. Manisha L Shah, has drawn the attention of the Court to the Seventy-seventh Amendment of the Constitution of India, as amended, in the year 1995, whereby, a provision is made in Article 16 of the Constitution of India by inserting clause 4-A in the said Article 16, which reads as under:

"16(4-A) Nothing in this Article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Casts and the Scheduled tribes, which, in the opinion of the State, are not adequately represented in the services under the State."

7. Not only that, the Division Bench of this Court, by Common Oral Judgement dated 25th October 2002, rendered in Special Civil Applications Nos. 3914 of 1989 and 7358 of 1989, relying upon the earlier decision of this Court in the case of R.K. Prajapati & Ors vs. State of Gujarat & Ors, reported in 33(2) GLR 1422, has observed as under:

"In view of the reservation policy in respect of the vacancies which are to be filled in by promotion having remained operative right from the resolution dated 31st January, 1976 till now and in view of the decision of the Division Bench of this Court in R.K. Prajapati (supra), the learned counsel for the petitioners in these two petitions state that they do not press for these petitions as the issue is concluded by the Division Bench of this Court and we also feel that the policy of reservation as envisaged in the impugned resolution dated 31st January 1976, as amended from time to time, has come to stay and more particularly, in view of the policy now having been incorporated in Article 16(4A) of the Constitution by an amendment, which came into force by virtue of the Constitution (77th Amendment) Act, 1995, the challenge against the policy of reservation in the vacancies which are to be filled in by promotion cannot be countenanced. Rule is therefore discharged with no order as to costs."

8. In that view of the legal position as above, the grievance of the petitioner no more survives and does not require any adjudication. Rule is, therefore, discharged with no order as to costs.

(Anant S. Dave, J.)

(swamy)